

Robert Corn-Revere (D.C. Bar No. 375415, admitted *pro hac vice*)
DAVIS WRIGHT TREMAINE LLP
1919 Pennsylvania Avenue NW, Suite 800
Washington, DC 20006-3401
Telephone: (202) 973-4225
Facsimile: (202) 973-4499
Email: robertcornreve@dwt.com

James C. Grant (Wash. Bar No. 14358, admitted *pro hac vice*)
DAVIS WRIGHT TREMAINE LLP
920 Fifth Ave, Suite 3300
Seattle, WA 98104-1610
Telephone: (206) 757-8096
Facsimile: (206) 757-7096
Email: jamesgrant@dwt.com

Counsel for Michael Lacey and James Larkin

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States of America,

Plaintiff,

v.

Michael Lacey, *et al.*,

Defendants.

No. CR-18-422-PHX-SMB

**MOTION FOR LEAVE TO JOINTLY
FILE MOTION TO DISMISS AND
EXCEED PAGE LIMITATION**

1 Defendants Michael Lacey, James Larkin, John Brunst and Scott Spear, by and
2 through their undersigned attorneys, respectfully request leave to file a joint motion to
3 dismiss the Superseding Indictment in this matter (Doc. 230), and to exceed the page
4 limits otherwise applicable under LRCiv. 7.2(e). The motion raises serious
5 constitutional issues regarding the Indictment, which runs to 92 pages and 100 counts.
6 Defendants seek dismissal because the Indictment does not set forth facts sufficient to
7 support the charges alleged, as required by the Fifth and Sixth Amendments, and
8 disregards fundamental First Amendment principles applicable in this context, where
9 the government is prosecuting Defendants for their roles as publishers of an online
10 forum for third-party speech. The government's approach of seeking to impose
11 vicarious liability in this regard has been rejected previously by several courts in cases
12 specifically concerning Backpage.com, and it is important for the Court to understand
13 this history. Defendants respectfully request that the Court allow sufficient page limits
14 to address these issues sufficiently.

15 Defendants further believe that it also serves judicial efficiency to address these
16 matters in a joint motion rather than in separate motions. Defendants therefore ask that
17 the Court permit Defendants to file a joint motion that is 45 pages in length (which is
18 fewer pages than would be permitted if each Defendant filed separately).

19 Pursuant to LRCrim 12.1 and LRCiv 7.2(e)(2), Defendants therefore ask that
20 the Court grant this request to file a joint motion as described, a copy of which is being
21 submitted with this motion.

22 DATED this 22nd day of April, 2019.

23 DAVIS WRIGHT TREMAINE LLP

24 s/ James C. Grant

25 s/ Robert L. Corn-Revere

26 Attorneys for Michael Lacey and James Larkin
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1 Pursuant to the District's Electronic Case Filing Administrative Policies and
2 Procedures Manual (May 2018) § II(C)(3), James C. Grant hereby attests that
3 all other signatories listed, and on whose behalf this filing is submitted, concur in the
filing's content and have authorized its filing.

4 s/ Paul J. Cambria, Jr.

LIPSITZ GREEN SCIME CAMBRIA LLP
Attorneys for Michael Lacey

6 s/ Thomas H. Bienert, Jr.

7 BIENERT KATZMAN, PLC
8 Attorneys for James Larkin

9 s/ Ariel A. Neuman

10 BIRD MARELLA BOXER WOLPERT NESSIM
11 DROOKS LINCENBERG AND RHOW
Attorneys for John Brunst

12 s/ Bruce Feder

13 FEDER LAW OFFICE PA
14 Attorney for Scott Spear

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2019, a true and correct copy of the foregoing document was electronically filed with the Clerk of the United States District Court of the District of Arizona by using the CM/ECF system, and that service will be accomplished by the CM/ECF system to all counsel of record.

s/ James C. Grant
Attorney for Michael Lacey and James Larkin